1. Defence

The Treaty devotes Chapter XX of Part Three to those issues concerning the defence of the zone known as focal area of the Río de la Plata. It establishes as a general principle that those matters relating to the defence of the focal area fall within the “exclusive jurisdiction of the Parties” (Article 85). Moreover, it sets forth that “in the face of a threat of aggression,” each riparian may adopt the necessary and transitional measures for its defence, outside the respective coastal belts of exclusive jurisdiction in the Río de la Plata and the belt of twelve nautical miles in the maritime boundary, measured from the respective coastal baselines, without causing significant damage to the other Party (Article 86).

The concept of focal area is twofold, denoting a commercial or strategic area of special interest. With reference to international trade, it determines a zone of great concentration of maritime traffic whereas from the strategic point of view, it identifies an area that requires special attention for its defence and for the prevention of its destruction, neutralization or obstruction.1 On the coasts of South America, there are various focal areas, among which are those of Río de Janeiro and Santos-San Pablo, in Brazil, of great importance as concentration areas of vessels and shipment, as well as that of the Río de la Plata, which concentrates the greatest part of the maritime trade of Argentina and Uruguay and constitutes the oceanic corridor for Bolivia and Paraguay. The Río de la Plata and its Maritime Boundary are, therefore, the focal area that Part Three of the Treaty contemplates,

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and in it both riparians may adopt measures in their right of self-defence in the face of a threat of aggression (Article 86).

During World War II, a Declaration signed by both countries had envisioned the defence of the zone. In fact, when slightly more than a year had gone by since the outbreak of the war, Argentina and Uruguay, concerned about the effects that the expansion of the conflict could have on the region, prepared a document on the defence of the Río de la Plata. In December 1940, the Ministers of Foreign Affairs of Argentina, Julio A. Roca (jr.), and Uruguay, Alberto Guani, met in Barra de San Juan, Department of Colonia, Uruguay, as guests at the important estate that the Argentinian Mr. Aarón Anchorena possessed in the area. On that occasion, they signed two Declarations, one on Reciprocal Assistance and Co-operation for the Defence and the other on the creation of a Customs Union between the two countries. In the Declaration on Co-operation for the Defence, they considered that the co-operation with the commitment stated in the Declaration on Reciprocal Assistance and Co-operation for the Defence of the Nations of the Americas, which had been approved in the Havana Meeting of Ministers of Foreign Affairs of the American Republics in July 1940, should be made effective. They added, moreover, that due to the common interest in the defence and security of the Río de la Plata, they considered that paragraph three of the Havana Resolution, which proposed the negotiation of supplementary agreements in the event of threat of aggressions, was applicable. Finally, the Declaration proposed conducting the corresponding consultations with the neighbouring countries to prevent all danger coming from outside the Continent. None of these documents was further developed, but remain as a testimony of a shared bilateral attitude of preventing external aggressions to the Río de la Plata region. It is the precedent in the riparians' foreign policy that establishes the co-operation with regard to the defence in the shared commercial and strategic area, which continues in Article 86 of the Treaty, to facilitate the measures that the Parties may adopt in the face of an external threat of aggression.

The Treaty refers to the measures that “each Party” may, individually, adopt with the condition that these measures cannot cause significant damage to the other Party (Article 86). As emerges from these provisions, there is no need to notify the other riparian of the measures that will be adopted outside the belt of exclusive jurisdiction in the Río de la Plata and the twelve nautical miles that constitute, at

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2 The Meeting of Ministers of Foreign Affairs held in Havana from 21 to 30 July 1940 took place after the fall of France in enemy hands, where it was likely that French and also Dutch possessions in the Caribbean and in Guyana could be overtaken by the Axis countries. The United States would not accept that result and such an attitude was supported by the rest of the American countries. Documents of the Meeting at www.yale.edu/lawweb/avalon/decade/decade58.htm.